

This case hinges on Mr. Carter's credibility. He testified that he injured his right shoulder and back on June 29, 1998, while raking asphalt. He also testified that he notified his foreman the next day and the company superintendent within a week to a month later. Conversely, Richard Neria, the foreman, testified he could not recall any conversation with

Mr. Carter about being injured at work. Likewise, Jim Castelli, the superintendent, adamantly testified that Mr. Carter did not advise him of an injury.

Mr. Carter neither requested nor sought medical treatment until after he was terminated for failing to show up for work between July 10 and 20, 1998. Further, the time records that Mr. Carter completed and signed at the end of each work day failed to note that he had sustained an injury despite a specific column, which was directly adjacent to the signature column, that requested such information.

The Judge had the opportunity to observe the witnesses testify and, therefore, assess their demeanor. In this instance, the Appeals Board gives some deference to the Judge's impression of the witnesses' credibility. After considering the entire record, the Appeals Board affirms the Judge's finding that Mr. Carter has failed to prove it is more probably true than not that he sustained personal injury by accident arising out of and in the course of his employment with JH Shears & Sons, Inc.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim or at a later preliminary hearing.<sup>1</sup>

**WHEREFORE**, the Appeals Board affirms the preliminary hearing Order dated December 10, 1998, entered by Administrative Law Judge Jon L. Frobish.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1999.

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BOARD MEMBER

c: Randy Stalcup, Wichita, KS  
Eric Lanham, Kansas City, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup>K.S.A. 1997 Supp. 44-534a(a)(2).